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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,822	12/31/2003	John Pafford	1842-0029	9366
28078	7590	01/25/2006		
MAGINOT, MOORE & BECK, LLP CHASE TOWER 111 MONUMENT CIRCLE SUITE 3250 INDIANAPOLIS, IN 46204			EXAMINER HOFFMAN, MARY C	
			ART UNIT 3733	PAPER NUMBER

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/749,822	Applicant(s) PAFFORD ET AL.	
	Examiner Mary Hoffman	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) 9-14 and 21-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 15-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/28/04, 3/08/04, 6/14/04, 8/30/04</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-25, and Species A, in the reply filed on 1/4/2006 is acknowledged. The traversal is on the ground(s) that claims 1, 2, 6, and 7 are generic claims, and that Fig. 4 should be included as part of Species A, Figures 1-3. This is found persuasive because after further consideration, claims 1, 2, 6, and 7 appear to be generic to both species, and Figure 4 is now part of species A, since the modification in shape in Figure 4 from circular to oblong would be considered obvious to one of ordinary skill in the art and is therefore not patentably distinct from Figures 1-3.

Claim 9-14 and 21-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Applicant has canceled claims 25-30. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/4/2006.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

Claims 1-8 and 15-20 are objected to because of the following informalities: In claim 1 and 15, please change in the preamble "the spine" to --a spine--, since it is the first mention of the term "spine " in the claims and should be therefore introduced with the word "a" rather than "the". Appropriate correction is required.

Specification

The disclosure is objected to because of the following informalities: In page 8 of the specification, line 8, please change "FIG. 7" to the correct label, which is --FIG. 8--.

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: ref. #'s 65 and 87. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: ref. #'s 81 and 89. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action

to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 15-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Lahille et al. (U.S. Patent No. 5,380,325).

Lahille et al. disclose a dynamic stabilization system comprising a stabilization element (FIG. 1, ref. #1) capable of spanning between two vertebrae, at least two bone anchors (FIG. 1, ref. #2), each having a bone engagement portion, and at least two connectors capable of connecting a corresponding one of the bone anchors to the stabilization element. At least one of the connectors includes a flexible element (FIG. 1, ref. #25) between the bone anchor and the stabilization element capable of permitting relative pivoting there between and an adjustment element for adjusting the flexibility of

Art Unit: 3733

the flexible element. The connector includes a bearing member attached to the stabilization element, the bearing member including the flexible element (FIG. 1, ref. #25, 26 and 3). The stabilization element includes an elongated spinal rod; the bearing member is a rod-end bearing including a rod engagement portion and the flexible element is a bearing element of the rod end bearing. The bearing element is received within a bearing race (FIG. 1, ref. # 26) of the rod end bearing and the adjustment element (FIG. 1, ref. #24) is arranged to compress the bearing element within the bearing race. The rod engagement portion includes a bore capable of receiving a portion of the spinal rod therein and a set screw (FIG. 2, ref. #24) for clamping the spinal rod within the bore. The at least one of the bone anchors includes a stem having a threaded portion; and the flexible element includes a bore capable of receiving the stem there through; and the adjustment element includes a nut engaging the threaded portion and arranged to compress the flexible element as the nut is threaded onto the threaded portion. The at least one of the bone anchor includes an intermediate portion (FIG. 1, ref. #23) between the stem and the bone engagement portion, the intermediate portion capable of supporting the flexible element so that the flexible element is compressed between the intermediate portion and the nut when the nut is threaded onto the threaded portion. The anchor of the connector is capable of substantially rigidly connecting one of the bone anchors to the stabilization element (see FIG. 6 and FIG. 8).

Conclusion

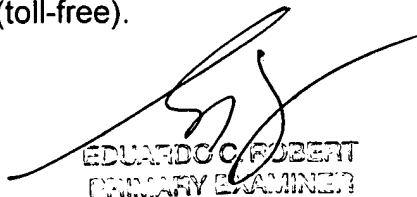

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCH



EDUARDO C. ROBERT
PRIMARY EXAMINER